

SUPREME COURT OF ARKANSAS

Opinion Delivered: February 8, 2007

IN RE: REPORT OF
LEGISLATIVE TASK FORCE
ON DISTRICT COURTS –
ALTERNATIVE PROPOSAL
BEING PUBLISHED FOR
COMMENT

PER CURIAM

On October 26, 2006, in response to a recommendation by the Legislative Task Force on District Courts,¹ we published for comment a proposed administrative order drafted by the Task Force that permitted certain district court judges participating in a proposed pilot program to preside over matters pending in the circuit court. *See In Re: Report of the Legislative Task Force on District Courts*. The Task Force informed the court that the proposed administrative order was based on Rule 72.1, Rules of the U.S. District Courts (E.D. and W.D., Ark.), and “would be the most effective way of addressing an issue upon which no agreement has been reached previously.” That issue is the subject matter jurisdiction for these proposed pilot district courts.

As we noted in our earlier *per curiam* opinion, because time was of the essence

¹ Act 1849 of 2005 created the Legislative Task Force on District Courts, and it was charged with conducting a comprehensive study of the transition of district court judges to state employee status and the funding and role of district courts.

with the General Assembly in session, we immediately published the proposed administrative order for the purpose of soliciting comments from the bench and bar while we at the same time considered the merits of the Task Force's proposal.

A number of comments have been received, and we thank the judges and lawyers who studied the proposal and offered their insights. A number of concerns were expressed, many of which the court shares. We do not intend to review each comment, but a common thread in many of the objections may be traced to the issue of the "record" in the event that circuit court cases are referred to district court. As district courts are courts of limited jurisdiction, district court judges do not have court reporters available to them. Until the court reporter issue, including the associated costs, is addressed by the General Assembly, we do not believe that it is in the interest of the state's judicial system to attempt to implement the Task Force's proposed administrative order at this time. At an appropriate time, after the court reporter issue is resolved, we would be willing to revisit the concept proposed by the Task Force. We would also be in a better position at that time to address other issues raised in connection with the Task Force's proposal.

To facilitate the work of the Task Force and to assist the General Assembly as it considers the various recommendations of the Task Force, we are publishing for comment an alternative approach. We solicit comments from the bench and bar to the proposal set out below. Comments should be in writing, submitted no later than March 2, 2007, and be addressed to: Les Steen, Supreme Court Clerk, Attention Administrative Order District

Courts, Justice Building, 625 Marshall , Little Rock, AR 72201.

We propose for consideration that Administrative Order Number 18 be amended by adding a subsection to apply in the event that the General Assembly approves a pilot program composed of five pilot district courts utilizing full-time, state salaried district court judges:

Administrative Order Number 18. Administration of District Courts.

. . .

6. *Jurisdiction of Pilot District Courts.* In addition to the powers and duties of a district court under this administrative order, a pilot district court shall exercise additional power and authority as set out in this subsection.

(a) *Original Jurisdiction.* A pilot district court shall have original jurisdiction within its territorial jurisdiction over the following civil matters:

(1) Exclusive of the circuit court in all matters of contract where the amount in controversy does not exceed the sum of one hundred dollars (\$100), excluding interest, costs, and attorney's fees;

(2) Concurrent with the circuit court in matters of contract where the amount in controversy does not exceed the sum of **ten thousand dollars (\$10,000)**, excluding interest, costs, and attorney's fees;

(3) Concurrent with the circuit court in actions for the recovery of personal property where the value of the property does not exceed the sum of **ten thousand dollars (\$10,000)**;

(4) Concurrent with the circuit court in matters of damage to personal property where the amount in controversy does not exceed the sum of **ten thousand dollars (\$10,000)**, excluding interest and costs.

(b) *Reference.* A pilot district court may be referred matters pending in the circuit court within its territorial jurisdiction. A district judge presiding over any referred matter shall be subject at all times to the superintending control of the administrative judge of the judicial circuit. The following matters pending in circuit court may be referred to a pilot district court:

(1) *Consent Jurisdiction.* Civil matters upon the consent of all parties;²

(2) *Protective Orders.*³ Petitions for temporary orders of protection pursuant

² We are not prepared at this time to announce the procedure to implement a civil consent process but will adopt necessary procedures if and when it becomes necessary. One possibility for consideration will be the procedure proposed in the Task Force's administrative order, which provided:

a. *Notice.* The circuit clerk shall give the plaintiff notice of the consent jurisdiction of a district judge when a civil suit is filed. The circuit clerk shall also attach the same notice to the summons for service on the defendant.

b. *Consent.* Any party may obtain a "Consent to District Judge Jurisdiction" form from the Circuit Clerk's Office, which shall provide that any appeal in the case shall be taken directly to the Arkansas Supreme Court or Court of Appeals.

c. *Transfer.* Once the completed forms have been returned to the circuit clerk, the circuit clerk shall then assign the case to a district judge and forward the consent forms for final approval to the circuit judge to whom the case was originally assigned. When the circuit judge has approved the transfer and returned the consent forms to the circuit clerk's office for filing, the circuit clerk shall forward a copy of the consent forms to the district judge to whom the case is reassigned. The circuit clerk shall also indicate on the file that the case has been reassigned to the district judge.

d. *Appeal.* The final judgment, although ordered by a district judge, is deemed a final judgment of the circuit court and will be entered by the circuit clerk under Rule 58 of the Arkansas Rules of Civil Procedure. Any appeal shall be taken to the Arkansas Supreme Court or Court of Appeals in the same manner as an appeal from any other judgment of the circuit court.

³ We are not prepared at this time to announce the procedure to refer matters to district court judges but will adopt necessary procedures if and when it becomes necessary. Options include the procedure in Rule 53 of the Arkansas Rules of Civil Procedure for referring issues to masters or the procedure in the Task Force's proposed administrative order, which provided:

2. *Reference.* With the concurrence of a majority of the circuit judges of a judicial circuit, the administrative judge of a judicial circuit may refer matters pending in the circuit court to a district judge serving within the judicial circuit, with the judge's consent, which shall not be unreasonably withheld. . . . A decision of a district judge is final and binding and is

to Ark. Code Ann. Section 9-15-206 (The Domestic Abuse Act of 1991);
(3) *Criminal Matters*.³ Any of the following duties (the rules referenced
below are the Arkansas Rules of Criminal Procedure) with respect to an investigation or
prosecution of an offense lying within the exclusive jurisdiction of the circuit court:

(A) Issue a search warrant pursuant to Rule 13.1.

(B) Issue an arrest warrant pursuant to Rule 7.1 or Ark. Code Ann. §
16-81-104, or issue a summons pursuant to Rule 6.1.

(C) Make a reasonable cause determination pursuant to Rule 4.1(e).

(D) Conduct a first appearance pursuant to Rule 8.1, at which the
judge may appoint counsel pursuant to Rule 8.2; inform a defendant
pursuant to Rule 8.3; accept a plea of "not guilty" or "not guilty by
reason insanity"; conduct a pretrial release inquiry pursuant to Rules
8.4 and 8.5; or release a defendant from custody pursuant to Rules
9.1, 9.2, and 9.3.

(E) Conduct a preliminary hearing as provided in Ark. Code Ann. §
5-4-310(a).

If a person is charged with the commission of an offense lying within the exclusive
jurisdiction of the circuit court, a district court judge may not accept or approve a plea of
guilty or nolo contendere to the offense charged or to a lesser included offense.

subject only to a right of appeal to the circuit judge to whom the case has been assigned. A party may appeal the decision of a district judge by filing a motion within ten (10) days of the decision. Copies shall be served on all other parties and the district judge from whom the appeal is taken. The motion shall specifically state the rulings excepted to and the basis for the exceptions. The circuit judge may reconsider any matter *sua sponte*. The circuit judge shall affirm the findings of the district judge unless they are found to be clearly erroneous or contrary to law.